

RD AN No. 4066 (1980-D)
April 5, 2005

TO: State Directors
Rural Development

ATTENTION: Rural Development Program Directors,
Rural Development Managers,
Community Development Managers,
Guaranteed Rural Housing Specialists,

FROM: Russell T. Davis *(Signed by David J. Villano for)*
Administrator
Rural Housing Service

SUBJECT: Guaranteed Rural Housing (GRH)
Lender Real Estate Owned Property Disposition Plans

PURPOSE/INTENDED OUTCOME:

The purpose of this Administrative Notice (AN) is to clarify the provisions of RD Instruction 1980-D regarding the content and submission requirements for GRH lender real estate owned (REO) property disposition plans.

COMPARISON WITH PREVIOUS AN:

This AN replaces and is substantially similar to AN No. 3861 issued on May 15, 2003.

EXPIRATION DATE:
April 30, 2006

FILING INSTRUCTIONS:
Preceding RD Instruction 1980-D

BACKGROUND:

RD Instruction 1980-D, section 1980.376(a)(1)(ii) provides limited direction concerning the required content and submission of a lender's plan to dispose of acquired property that secured a Single Family Guaranteed Rural Housing Loan. Rural Development and the lender share a common interest in efficiently disposing of REO by minimizing costs and maximizing recovery. Therefore, it is essential to establish consistent policies and coordinate relevant aspects of REO disposition to ensure the expeditious sale of the REO and the settlement of loss claims.

The purpose of a property disposition plan is to ensure that both Rural Development and the lender have a mutual understanding of how a property will be marketed and what factors might influence the net proceeds from the sale. While Rural Development does not impose specific marketing requirements, RD Instruction 1980-D, section 1980.370, binds a lender to "...perform those services which a reasonable and prudent lender would perform in servicing its own portfolio of loans that are not guaranteed." This condition applies as well to REO disposition practices. Rural Development expects a lender to list and sell REO, given prevailing market conditions, in a manner that maximizes recovery. To accomplish this, the lender may offer concessions, when warranted by market conditions, which are reasonable and customary for the area and may include closing costs and additional property improvements unless repairs were warranted prior to marketing the property. The amount of seller concessions may be beyond what is reasonable and customary if a property is in a hard to sell area (as evidenced by marketing activities, time on the market, etc.) An example may be a concession that influenced the price paid for real estate whereby a nonprofit entity provided a gift/assistance to the homebuyer and in turn the nonprofit receives a contribution for the payment of the gift/assistance from the seller of the property. This type of concession and amount is beyond what is reasonable and customary and requires prior approval from Rural Development. This practice falls within the guise of an inducement to purchase a property.

IMPLEMENTATION RESPONSIBILITIES:

Submit Property Disposition Plan

Under RD Instruction 1980-D, section 1980.376(a)(1)(ii), lenders must submit a property disposition plan for Rural Development concurrence if they take title to the property at liquidation. A lender should submit a property disposition plan to Rural Development for each REO within 30 days of liquidation. RD Instruction 1980-D, section 1980.302(a) defines liquidation as follows: "Liquidation of the loan occurs when the Lender acquires title to the security...In States providing a [post-sale] redemption period, the Lender does not typically acquire title until after expiration of the redemption period." Thus, the 30-day time period for submitting a property disposition plan would not begin until after expiration of any applicable redemption period. Lenders that are unsure whether a redemption period will affect the due date of the disposition plan should contact Rural Development staff. If, before marketing and within 30 days of liquidation, a lender chooses to file a loss claim based on a liquidation value and estimated REO expenses, a property disposition plan will still be required for loss claim processing.

Rural Development and the lender have a common interest in effectively assessing an accurate value of the REO property prior to the submission of a property disposition plan and settlement of a loss claim. If the interior condition of the property cannot be determined due to an incomplete eviction process or some other legitimate reason, the circumstances should be documented and presented to the Agency with the property disposition plan within 30 days of gaining access to the property. Such circumstances do not generally extend the six-month marketing period.

Contents of a property disposition plan.

Beyond a written plan as described below, Rural Development does not require additional documentation to be submitted with the plan. Supporting documentation should be held in the lender file to submit with the loss claim or, if necessary, for subsequent Rural Development review. To assure a mutual understanding of the proposed disposition, the plan should address the following:

➤ **Borrower Information:**

- Borrower's name and social security number.
- Date of the plan.

➤ **Lender Information:**

- Servicer or holder's name and tax identification number.
- Contact person's name, telephone number, fax number, and e-mail address.

➤ **Loan and Property Information:**

- Lender's loan number.
- Property street address including city, county, state, and zip code.
- REO date when the real estate was acquired and, in case of redemption and/or eviction, the date of possession.
- Date that eviction was completed, if applicable.

➤ **Property Value Summary:**

- Two approaches to value should be included.
 - ✓ An estimate of the property's present market value based on an interior appraisal and Broker's Price Option (BPO).
- When an appraisal was obtained include the appraisal date, appraised "as is" value, appraised "as repaired" value, the estimated cost of the repairs, the appraiser's name, company's name, and telephone number.
- When a BPO was obtained include the BPO date, BPO "as is" value, BPO "as repaired" value, and the BPO estimated costs of repair.
- An itemization of the cost: of any emergency maintenance necessary to secure the property, and/or repairs necessary to market the property.
- An itemization of the cost of any other planned capital improvement repairs, including the expected amount of property value to be added.

➤ **Listing Summary:**

- If an asset management company is involved, provide its name as well as the name of the company's contact person or asset manager, and the asset manager's telephone number.
- Real estate agent's name, telephone and fax number.
- Local Listing Agency name, city and state.
- Proposed marketing strategy, which should include techniques to be used, such as: an exclusive broker listing; an open listing; a multiple listing; the property will be sold as-is or as improved; the proposed advertising methodology (i.e., open house, broker tour, and any media or publicity frequency, including signs); and, whether financing or seller concessions will be offered.
- Any anticipated marketing expenses, including advertising, commissions, and seller concessions, including any contributions to closing costs.
- A statement of listing price and expected marketing time, minimum acceptable price or other bid acceptance policy; for example, if a percentage of the listed price will be used, or if a lower acceptable bid is contingent on marketing time.
- Any other information related to the sale that might impact the amount of loss.

A property disposition worksheet is provided (Attachment 1). *Additional pages can be added to complete the plan, as the form has space limitations.* The lender may use this form or another acceptable format, which includes all required data elements listed above.

Review and Provide Concurrence with Property Disposition Plan

A lender should proceed expeditiously with REO disposition. When a lender submits an acceptable property disposition plan, the Agency is not required to provide written concurrence. Rural Development staff will contact the lender for clarifications, additional information, to provide recommendations; however, if concurrence is not received within 5 business days after receipt of the plan, it can be implemented. The Agency reserves the right to reject a plan that indicates a deficiency or departure from prudent disposition practices. After implementation, a lender should review any significant departure from the plan with Rural Development before disposition. Rural Development review and acceptance of a property disposition plan does not necessarily mean that all expenses associated with the plan will be accepted as reimbursable cost items for the loss claim. Reimbursable expenses must be reasonable and customary. At its discretion, the Agency reserves the right to request a copy of the appraisal or BPO that was used to develop the disposition plan on a case-by-case basis. Copies of the appraisal or BPO will typically be required for Quality Control purposes to support questionable listing prices.

Loss Claim filed without Property Disposition Plan

If REO has been sold without prior submission of a required plan, Rural Development, before a claim is paid, will require the lender to submit a disposition summary addressing the contents of a property disposition plan, including actual marketing activities, prices and expenses. A lender may risk loss claim reduction or denial for failure to act prudently on REO disposition; however, a claim may not be reduced or denied solely for failure to submit a plan before the property is sold. Under RD Instruction 1980.376(b), in order to reduce or deny a claim, Rural Development

must make a connection between a lender's act (or failure to act) and the amount of the loss. Rural Development will monitor lenders for compliance with property disposition plan requirements and provide training when necessary.

Each Rural Development State Office is responsible for notifying state-approved lenders of the property disposition plan requirements and provide a copy of the worksheet by a letter similar to Attachment 2. The National Office will advise nationally approved lenders concurrent with the issuance of this AN using Attachment 2. Copies of the AN can also be obtained at the Rural Development web site, http://www.rurdev.usda.gov/regs/an_list.html.

For Further Information:

Questions may be directed to Susanne Wilson at (202) 720-9705 or susanne.wilson@usda.gov.

Attachments

TO: Nationally Approved SF-GRH Lenders

ATTENTION: Servicing and Loss Claim Managers

SUBJECT: Single Family - Guaranteed Rural Housing (SF-GRH)
Lender Real Estate Owned Property Disposition Plans

Rural Development and the lender have a common interest in efficiently disposing of REO by minimizing costs and maximizing recovery. Therefore, it is essential to establish consistent policies and coordinate relevant aspects of REO disposition to ensure the expeditious sale of the REO and the settlement of loss claims.

The purpose of a property disposition plan is to ensure that both Rural Development and the lender have a mutual understanding of how a property will be marketed and what factors might influence the net proceeds from the sale. While Rural Development does not impose specific marketing requirements, RD Instruction 1980-D, section 1980.370, binds a lender to "...perform those services which a reasonable and prudent lender would perform in servicing its own portfolio of loans that are not guaranteed." This condition applies as well to REO disposition practices. Rural Development expects a lender to list and sell REO, given prevailing market conditions, in a manner that maximizes recovery. To accomplish this, the lender may offer concessions, when warranted by market conditions, which are reasonable and customary for the area and may include closing costs and additional property improvements unless repairs were warranted prior to marketing the property. The amount of seller concessions may be beyond what is reasonable and customary if a property is in a hard to sell area (as evidenced by marketing activities, time on the market, etc.). An example may be a concession that influenced the price paid for real estate whereby a nonprofit entity provided a gift/assistance to the homebuyer and in turn the nonprofit receives a contribution for the payment of the gift/assistance from the seller of the property. This type of concession and amount is beyond what is reasonable and customary and requires prior approval from Rural Development. This practice falls within the guise of an inducement to purchase a property.

IMPLEMENTATION RESPONSIBILITIES:

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Under RD Instruction 1980-D, section 1980.376(a)(1)(ii), lenders must submit a property disposition plan for Rural Development concurrence if they take title to the property at liquidation. A lender should submit a property disposition plan to Rural Development for each REO within 30 days of liquidation. RD Instruction 1980-D, section 1980.302(a) defines liquidation as follows: “Liquidation of the loan occurs when the Lender acquires title to the security...In States providing a [post-sale] redemption period, the Lender does not typically acquire title until after expiration of the redemption period.” Thus, the 30-day time period for submitting a property disposition plan would not begin until after expiration of any applicable redemption period. Lenders that are unsure whether a redemption period will affect the due date of the disposition plan should contact Rural Development staff. If, before marketing and within 30 days of liquidation, a lender chooses to file a loss claim based on a liquidation value and estimated REO expenses, a property disposition plan will still be required for loss claim processing.

Rural Development and the lender have a common interest in effectively assessing an accurate value of the REO property prior to the submission of a property disposition plan and settlement of a loss claim. If the interior condition of the property cannot be determined due to an incomplete eviction process or some other legitimate reason, the circumstances should be documented and presented to the Agency with the property disposition plan within 30 days of gaining access to the property. Such circumstances do not generally extend the six-month marketing period.

Contents of a property disposition plan

Beyond a written plan as described below, Rural Development does not require additional documentation to be submitted with the plan. Supporting documentation should be held in the lender file to submit with the loss claim or, if necessary, for subsequent Rural Development review. To assure a mutual understanding of the proposed disposition, the plan should address the following:

➤ **Borrower Information:**

- Borrower’s name and social security number.
- Date of the plan.

➤ **Lender Information:**

- Servicer or holder’s name and tax identification number.
- Contact person’s name, telephone number, fax number, and e-mail address.

➤ **Loan and Property Information:**

- Lender’s loan number.
- Property street address including city, county, state, and zip code.
- REO date when the real estate was acquired and, in case of redemption and/or eviction, the date of possession.

- Date that eviction was completed, if applicable.

➤ **Property Value Summary:**

- Two approaches to value should be included.
 - ✓ An estimate of the property's present market value based on an interior appraisal and Broker's Price Option (BPO) is the preferred method.
- When an appraisal was obtained include the appraisal date, appraised "as is" value, appraised "as repaired" value, the estimated cost of the repairs, the appraiser's name, company's name, and telephone number.
- When a BPO was obtained include the BPO date, BPO "as is" value, BPO "as repaired" value, and the BPO estimated costs of repair.
- An itemization of the cost of any emergency maintenance necessary to secure the property, and/or repairs necessary to market the property.
- An itemization of the cost of any other planned capital improvement repairs, including the expected amount of property value to be added.

➤ **Listing Summary:**

- If an asset management company is involved, provide its name as well as the name of the company's contact person or asset manager, and the asset manager's telephone number.
- Real estate agent's name, telephone and fax number.
- Local Listing Agency name, city and state.
- Proposed marketing strategy, which should include techniques to be used, such as: an exclusive broker listing; an open listing; a multiple listing; the property will be sold as-is or as improved; the proposed advertising methodology (i.e., open house, broker tour, and any media or publicity frequency, including signs); and, whether financing or seller concessions will be offered.
- Any anticipated marketing expenses, including advertising, commissions, and seller concessions, including any contributions to closing costs.
- A statement of listing price and expected marketing time, minimum acceptable price or other bid acceptance policy; for example, if a percentage of the listed price will be used, or if a lower acceptable bid is contingent on marketing time.
- Any other information related to the sale that might impact the amount of loss.

A property disposition worksheet is provided (Attachment 1). *Additional pages can be added to complete the plan, as the form has space limitations.* The lender may use this form or another acceptable format, which includes all required data elements listed above.

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A lender should proceed expeditiously with REO disposition. When a lender submits an acceptable property disposition plan, the Agency is not required to provide written concurrence. Rural Development staff will contact the lender for clarifications, additional information, to provide recommendations; however, if concurrence is not received within 5 business days after receipt of the plan, it can be implemented. The Agency reserves the right to reject a plan that indicates a deficiency or departure from prudent disposition practices. After implementation, a

lender should review any significant departure from the plan with Rural Development before disposition. Rural Development review and acceptance of a property disposition plan does not necessarily mean that all expenses associated with the plan will be accepted as reimbursable cost items for the loss claim. Reimbursable expenses must be reasonable and customary. At its discretion, the Agency reserves the right to request a copy of the appraisal or BPO that was used to develop the disposition plan on a case-by-case basis. Copies of the appraisal or BPO will typically be required for Quality Control purposes to support questionable listing prices.

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For Further Information:

Copies of the AN can be obtained at the Rural Development web site, http://www.rurdev.usda.gov/regs/an_list.html. Questions may be directed to Susanne Wilson at (202) 720-9705 or susanne.wilson@usda.gov.

Attachment